

In determining whether agreements with fixed purchase options are conditional sales or true leases, the Department would look to see if the agreement also contained language that guaranteed that the equipment was sold at the end of the term. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

August 26, 1999

Dear Xxxxx:

This letter is in response to your letter dated June 25, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY received the enclosed response to my inquiry regarding the taxability of certain lease transactions. The prompt response is greatly appreciated. However, the reply did not answer any of the questions put forth in my initial letter. I have included a copy of that letter as well. Since I am looking for information regarding leasing in general, and I am not looking at one specific transaction, I don't think a private letter ruling is appropriate, nor do I think it would be granted. Unfortunately, the 'general' information letter was too general and as mentioned before, simply restated the facts and information in my initial letter rather than giving any answers to the questions.

I understand the information given in a general information letter is not binding so I am hoping that a second attempt at this will yield direct answers to my questions. The last paragraph of page two of the enclosed reply from the state says that a true lease 'generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out'. This leads me to believe that any stated percentage residual or fixed purchase option (i.e. 10%, 25%, 50%) would not be a true lease since the residual is not fair market value.

In the paragraph directly preceding the last paragraph on page two you state that a conditional sale "is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, the transaction will be considered a conditional sale'.

The two definitions given seem to contradict themselves in the sense that any residual type other than fair market value and guaranteed residual (put residual) do not fall into either category. In fact, my questions deal directly with residuals that do not fall into either category. Please refer to my initial letter of May 17, 1999 for specific details surrounding our leasing business. My questions again are as follows:

Are leases with a 10% FPO considered conditional sales where an exemption can be granted to all exempt organizations?

Are leases with an FPO of less than 10% (i.e.9%) considered conditional sales where an exemption can be granted to all exempt organizations?

If the answers to the above questions are no, would the answer change if we are dealing with equipment that has a longer useful life?

Also, if the answer is no to the first two questions above, is there any way a lease could be structured with a 10% FPO and also be exempt for these exempt customers?

Again, my company is losing a great deal of business to our competitors due to the fact that they are considering 10% FPO leases as conditional sales and granting exemptions to all exempt organizations. I would respectfully request that the state reply to these questions so I have some clear guidelines to properly comply with the many unique regulations your state has.

If you have any questions please call me at ####.

We are unable to answer your question whether your company's agreements are conditional sales or true leases in the context of a general information letter. In order to make such a determination, the Department needs to review all relevant information including a copy of the lease in question. Determinations as to whether an agreement is a conditional sale or true lease are extremely fact specific and turn on the exact language of the agreements.

In determining whether agreements with fixed purchase options are conditional sales or true leases, the Department would look to see if the agreement also contained language that guaranteed that the equipment was sold at the end of the term. See 86 Ill. Adm. Code 130.2010. For example, if the fixed purchase option agreement contained language where it was required that the equipment either be purchased by the "lessee/purchaser" or returned to the "lessor/retailer" to be sold and the "lessee/purchaser" was obligated to reimburse the "lessor/retailer" for any loss on the sale, the agreement generally would be considered a conditional sale if there were no contradictory language in the agreement.

As stated above, there are no clear-cut rules as to whether a lease is a conditional sale or a true lease. The determinations are fact specific and turn on the exact language of the agreements. Generally, leases with a fixed purchase option may be conditional sales if the "lessor/retailer" is guaranteed that the property will be sold at the time the agreement is entered into. If they are so guaranteed, then exempt organizations may be granted appropriate exemptions. If they were not so guaranteed, the agreements would generally be considered true leases. See 86 Ill. Adm. Code 130.2010.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.